

Senate Bill No. 805

CHAPTER 717

An act to amend Section 25401.1 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 23, 2004. Filed with Secretary of State September 23, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 805, Escutia. Hazardous substances: brownfields.

Existing law, the California Land Environmental Restoration and Reuse Act (CLERRA), specifies a procedure for the selection of an oversight agency for a property subject to a phase I environmental assessment by representatives of the Department of Toxic Substances Control and the State Water Resources Control Board. The act authorizes a local agency to issue a notice requiring the owner or operator to conduct a phase I environmental assessment of certain property, in response to the release or the threat of a release and to protect human health and the environment, as specified. The act also authorizes the local agency to require the owner or operator to prepare a preliminary endangerment assessment under specified conditions and require or initiate an investigation and remedial action. The act defines the term property as meaning real property, but excludes, from that definition, among other things, a site that is larger than 5 acres of contiguous property under the same ownership.

For purposes of the California Environmental Quality Act (CEQA), the term "infill site" is defined as a site in an urbanized area that meets specified conditions, including that a specified percentage of the immediately adjacent parcels to the site or adjoining parcels to the site are developed with qualified urban uses.

This bill would instead include a site that is larger than 5 acres of contiguous property under the same ownership if the site is an infill site, as defined in CEQA, except the bill would include for such purpose an industrial use, as a "qualified urban use" and a parcel that is adjoining or immediately adjacent to the site if the parcel is separated only by an improved public right-of-way.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Existing law, the California Land Environmental Restoration and Reuse Act (Chapter 6.10 (commencing with Section 25401.1) of Division 20 of the Health and Safety Code), which is also known as CLERRA, gives cities and counties the authority to either order or directly undertake the investigation and cleanup of abandoned and underutilized parcels of contaminated properties, commonly called “brownfields.”

(b) CLERRA provides local governments, owners, occupants, and lenders, with immunity from being required by state or local environmental agencies to do further investigation or cleanup work on properties that have already been cleaned up pursuant to the CLERRA environmental oversight process.

(c) Furthermore, under CLERRA, the California Environmental Protection Agency (CalEPA) is required to develop pilot screening numbers for 54 hazardous substances that are typically found at brownfield sites.

(d) These advisory screening numbers will serve as reference numbers to help developers and local governments estimate the costs and extent of cleanup of contaminated sites, providing valuable information in their development decisions.

(e) CLERRA also requires CalEPA to publish a list of screening numbers for specified contaminants to protect human health and safety.

(f) After public workshops in northern and southern California in late February 2004, CalEPA plans to publish final screening numbers and a guidance manual by June 2004.

SEC. 2. Section 25401.1 of the Health and Safety Code is amended to read:

25401.1. For purposes of this chapter, the following terms have the following meanings:

(a) “Department” means the Department of Toxic Substances Control.

(b) “Hazardous material” means a substance or waste that because of its physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment. “Hazardous material” includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or 25316.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 13050 of the Water Code or as defined in paragraph (2) of subdivision (b) of Section 101075.

(c) “Local agency” means the local department, office, or other agency of a city or county designated pursuant to subdivision (a) of Section 25401.2.



(d) “Oversight agency” means the department or the regional board, as appropriate, that oversees a site investigation and remedial action pursuant to this chapter.

(e) “Person” means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. “Person” also includes any city, county, city and county, district, commission, or the state, or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(f) “Phase I environmental assessment” means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material on or near the property, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, historical aerial photographs of the property and the area in its vicinity, relevant files of federal, state, and local agencies, regulatory correspondence, records of prior releases of hazardous materials and environmental reports, database searches, visual and other surveys of the property, and interviews with available current and previous owners and operators of the property. A phase I environmental assessment does not require sampling or testing on or around a property.

(g) “Preliminary endangerment assessment” means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials that pose a threat to public health or the environment. A preliminary endangerment assessment shall be conducted in a manner that complies with the guidelines published by the department entitled “Preliminary Endangerment Assessment: Guidance Manual,” and that evaluates whether any hazardous material has been discharged, threatens to discharge, or is discharging, to waters of the state. A preliminary endangerment assessment requires sampling and analysis of a property, a preliminary determination of the type and extent of hazardous materials release or threatened release on contamination of the property, and a preliminary evaluation of the risks that hazardous materials contamination of the property may pose to public health or the environment, including waters of the state.

(h) (1) “Property” means real property, as defined in Section 658 of the Civil Code.

(2) “Property” does not include any of the following:



(A) A site listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed for, and ranked as, qualifying for this list.

(B) A site on the list maintained by the department pursuant to Section 25356.

(C) An active or former federal military base or property that is or was owned by any department, agency, or instrumentality of the United States.

(D) A property for which a no-further-action determination has been issued by the department or a regional board, under applicable statutes or regulations.

(E) A site that is, or becomes, subject to an enforcement action or order issued by a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code, or an enforcement action by the department pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300).

(F) A site that is, or becomes, subject to a corrective action requirement, or for which a no-further-action determination has been issued, by a regional board or a local oversight program pursuant to Section 25297.1 or Chapter 6.75 (commencing with Section 25299.10), unless the local agency makes one of the findings described in subdivision (b) of Section 25401.3 for a hazardous material other than petroleum.

(G) A site that is, or becomes, subject to a corrective action order issued pursuant to Section 25187, or a site that is, or becomes, authorized or permitted pursuant to Chapter 6.5 (commencing with Section 25100) for the treatment, storage, or disposal of hazardous waste.

(H) A site that is, or becomes, subject to a response or cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code.

(I) A site that is, or becomes, subject to an order for corrective action issued pursuant to Part 5 (commencing with Section 45000) of Division 30 of the Public Resources Code.

(J) A site located within a redevelopment area established pursuant to Division 24 (commencing with Section 33000).

(K) A site that is larger than five acres of contiguous property under the same ownership, unless the site is an infill site, as defined in Section 21061.0.5 of the Public Resources Code.

(i) For purposes of this subparagraph, a “qualified urban use,” as defined in Section 21072 of the Public Resources Code, includes an industrial use.



(ii) For purposes of this subparagraph, a parcel is adjoining or immediately adjacent to the site, as required by subdivision (a) of Section 21061.0.5 of the Public Resources Code, if the parcel is separated from the site only by an improved public right-of-way.

(L) A site that has one or more full-time equivalent employees on an annualized basis, excluding employees who are primarily responsible for maintaining site security.

(M) A site that is owned by any state or local public agency.

(N) A site that is being used for productive agriculture.

(O) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, enters into a voluntary agreement with an oversight agency to commence and complete a site investigation and remediation of the property under that oversight agency's oversight and jurisdiction.

(P) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, requests the designation of an administering agency to oversee a site investigation and remedial action at the site pursuant to Chapter 6.65 (commencing with Section 25260).

(Q) Property that is the subject of continuous expansion or improvement, and is owned or operated by an operating industrial or commercial activity.

(R) Residential property with an owner-occupied dwelling.

(S) Property occupied by a family-owned business that has no employees other than members of the family or a business that has no employees other than the owners.

(T) Property that is dedicated to a public use by a public utility, as provided in Section 1007 of the Civil Code.

(U) Property acquired, to be acquired or proposed for use as a schoolsite, prior to its occupancy for a school, if a school district has entered into an enforceable environmental oversight agreement with the department to conduct a preliminary endangerment assessment or other response action at the property pursuant to Section 17213.1 of the Education Code. The exclusion provided in this subparagraph shall not apply if the school district determines, after entering into that agreement, not to pursue the use of the site as a school, or if the agreement between the department and the school district is terminated or expires.

(i) (1) "Qualified person" means one of the following:

(A) For activities conducted under Section 25401.6, an environmental assessor, as defined in paragraph (2).

(B) For activities conducted under Section 25401.7, an environmental assessor, as defined in paragraph (2), who also has



demonstrated expertise in hazardous materials site investigation and cleanup.

(2) “Environmental assessor” means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570), a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science, engineering geology, or environmental or public health, or a directly related science field. In addition, any person who conducts a phase I environmental assessment shall have at least two years of experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years of experience in conducting those assessments.

(j) “Reasonably foreseeable uses” means land uses that are authorized under the applicable general plan and zoning code, and any additional uses that are identified by the local land use agency as reasonably foreseeable uses for a property at the time the preliminary endangerment assessment for that property is being prepared pursuant to Section 25401.4 or 25401.6.

(k) “Remedial action” means a remedial action, as defined in subdivision (g) of Section 25260.

(l) “Remediation plan” means a proposal to complete a site investigation and a remedial action on a property, a schedule for the conduct of that site investigation and remedial action, the method for the oversight of those actions, and the state and local laws, ordinances, regulations, and standards that are applicable to those actions, for approval by the oversight agency pursuant to Section 25401.5 or 25401.7.

(m) “Regional board” means a California regional water quality control board.

(n) “Release” has the same meaning as defined in Section 25320, but with respect to a hazardous material.

(o) “Responsible party” means a “responsible party” or “liable person” as defined in subdivision (a) of Section 25323.5, or a person



subject to an order pursuant to subdivision (a) of Section 13304 of the Water Code.

(p) “Site investigation” has the same meaning as defined in Section 25260.

(q) “Written determination of completion” means a document issued by the oversight agency that certifies that a remedial action carried out pursuant to this chapter has been satisfactorily completed, in accordance with an approved remediation plan, that applicable remedial action standards and objectives have been achieved, that financial assurance for all operation and maintenance activities, if applicable, has been obtained, and that the property for which the written determination of completion is issued does not pose a significant risk to human health or the environment, does not impact the beneficial uses of waters of the state, and is in a condition that allows it permanently to be used for its reasonably foreseeable uses without any significant risk to human health or any significant potential for future environmental damage. The written determination of completion shall also specifically describe any conditions, restrictions, or limitations imposed on the site, including financial assurance, if applicable, and any land use controls placed on the property. The written determination of completion shall specifically identify the locations where the remediation plan that formed the basis of the determination is kept on file by the oversight agency and the local agency. These files shall be made available to the public upon request.

